



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101

MVP

May 1, 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ MVP-2025-00436-BCB (MFR 1 of 1)²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Wetland 9: non-jurisdictional (0.1350 acres)
 - ii. Wetland 10: non-jurisdictional (0.0104 acres)

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The features within the review area include two wetlands within the red polygons as shown on the attached figures labeled MVP-2025-00436-BCB Page 1 – 2 of 2

Project Area Size (in acres): 5.28

Location Description: The project/review area is located in Section 26 of Township 67 N, Range 17 W, St. Louis County, Minnesota

Center Coordinates of the Project Site (in decimal degrees)
(Latitude: 48.2652208419112; Longitude: -92.4853101570746)

Nearest City or Town: Orr

County: Saint Louis

State: Minnesota

Other associated Jurisdictional Determinations (including outcomes): Wetland 9 was previously determined to be non-jurisdictional (MVP-2022-01549-MWV). The regulatory determined that wetland 9 was created in upland and only drains upland meeting the exemption.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸
N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): N/A
 - d. Impoundments (a)(2): N/A
 - e. Tributaries (a)(3): N/A
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A
8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES
 - a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

The Corps previously determined through an AJD (MVP-2022-01549-MWV) that Wetland 9 met the exclusion 33 CFR 328.3(b)(3)). The applicant requested an AJD for a section of wetland 9 that extends to the north that appeared to not be covered by the previous AJD. This section of wetland is still part of wetland 9 and resources used to evaluate the wetland included USGS 3DEP mapping, USFWS NWI, and NRV. The expansion of wetland 9 and wetland 9 itself was still determined to meet the definition of a ditch that was created by excavating dry land, drain only dry land, and the feature does not carry relatively permanent flow, nor is a relocated tributary. Wetland 9 is not subject to Section 404 of the Clean Water Act (CWA) because it meets the 33 CFR 328.3(b)(3) exclusion.

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetland 10 is not a TNWs, territorial sea, or interstate water and therefore is not an (a)(1) water. National Regulatory Viewer: USGS 3DEP map and hill shade, and a delineation submitted by SEH from 2022 indicate that wetland 10 is a depressional wetland, surrounded by roads on all sides. The wetland is not identified within the National Wetland Inventory database when reviewing the delineation report. The wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetland is approximately 0.05 miles south of Crane Lake. However, there are no ditches, swales, pipes, or culverts that connect this wetland to downstream jurisdictional waters. Wetland 10 is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, the wetland is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule. Thus, the wetland is not subject to Section 404 of the Clean Water Act (CWA).

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. August 2022, Delineation performed by SEH

⁹ 88 FR 3004 (January 18, 2023)

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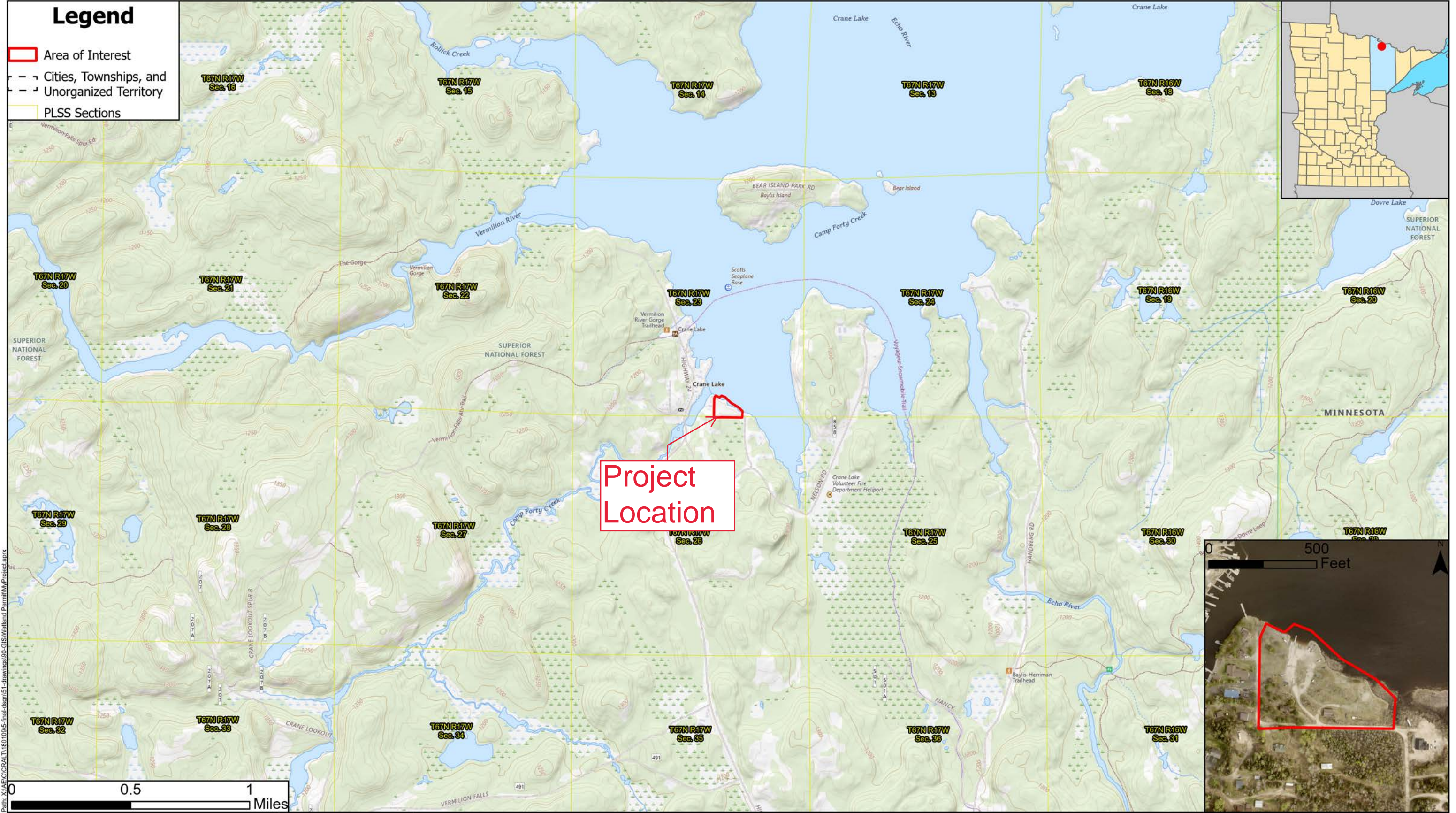
- b. USGS 3d Elevation Program (3DEP Map) 04/25/2025
- c. USGS Hill shade 04/25/2025
- d. NRV 04/25/2025
- e. NWI 04/25/2025

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action

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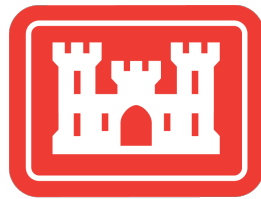
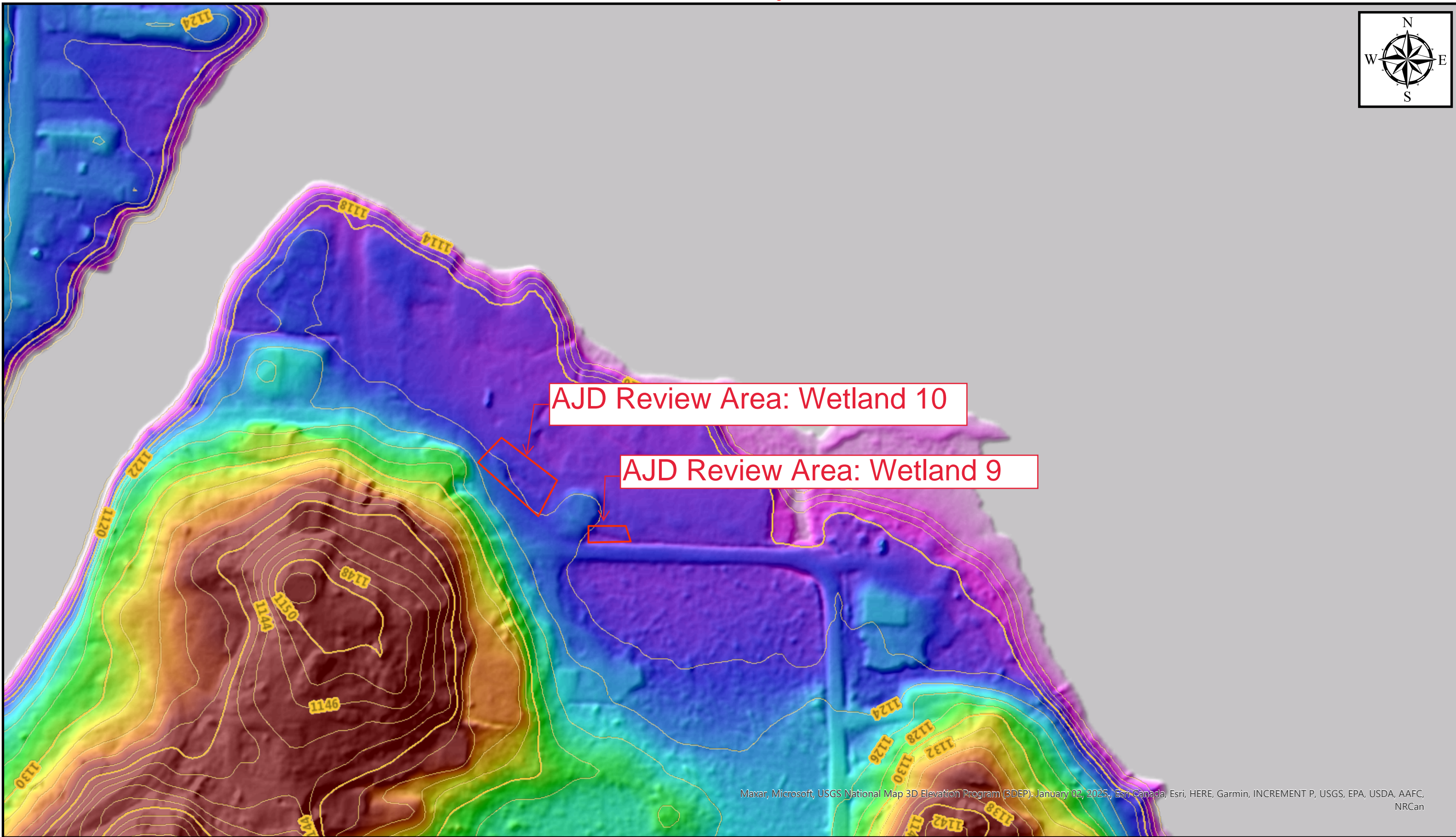
	3535 VADNAIS CENTER DR. ST. PAUL, MN 55110 PHONE: (651) 490-2000 FAX: (888) 908-8166 TF: (800) 325-2055 www.sehinc.com	Project: CRALT 180109 Print Date: 3/11/2025	<p>Site Location & USGS Topography</p> <p>Bayside Boat Landing</p> <p>Crane Lake, St. Louis County, Minnesota</p>	<p>Figure 1</p>
	User Name: J. Thayer Projection: NAD 1983 HARN Adj MN St. Louis Feet Source: SEHINC, USGS			

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 <p>3535 VADNAIS CENTER DR. ST. PAUL, MN 55110 PHONE: (651) 490-2000 FAX: (888) 908-8166 TF: (800) 325-2055 www.sehinc.com</p>	<p>Project: CRALT 180109 Print Date: 3/12/2025</p> <p>User Name: J. Thayer Projection: NAD 1983 HARN Adj MN St. Louis Feet Source: SEHINC, USGS</p>	<p>Proposed Wetland Impacts Bayside Boat Landing Crane Lake, St. Louis County, Minnesota</p>	<p>Figure 3</p>
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Map Created by: Ben Bejcek
Date: 4/24/2025
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere